

**IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MISSOURI
WESTERN DIVISION**

United States of America,)	
)	
Plaintiff,)	
vs.)	Case No. 05-0211-01-CR-W-FJG
Donald E. Tooley,)	
)	
Defendant.)	

ORDER

Pending before the Court is the issue of defendant's competency. On June 28, 2005, defendant file a motion for determination of competency (Doc. #18). Thereafter, on July 5, 2005, Magistrate Sarah W. Hays committed defendant to a United States Medical Center for Federal Prisoners to undergo a psychological or psychiatric examination and directed that a report be prepared by the examiner. Magistrate Hays held a hearing regarding defendant's competency on October 12, 2005, at which time the parties stipulated to a report prepared by Ron Nieberding, Ph.D. That report concluded there was no clear evidence to indicate that defendant is not competent to proceed with the process of criminal adjudication.

Magistrate Hays issued a report and recommendation (Doc. #25), filed October 13, 2005, finding that defendant is does not suffer from a mental disease or defect which would prevent him from understanding the nature and consequences of the proceedings against him or assist in his own defense and that is competent to stand trial. No objections to the report and recommendation were filed.

The Court, after independent review of the record and applicable law, finds that defendant is not currently suffering from a mental disease or defect which would prevent him from understanding the nature and consequences of the proceedings against him or assist in his own defense.

IT IS SO ORDERED.

/s/Fernando J. Gaitan, Jr.
Judge Fernando J. Gaitan, Jr.
United States District Judge

Dated: October 31, 2005
Kansas City, Missouri